



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

GORRINGE *et al.*

Appl. No. 09/763,750

Filed: June 4, 2001

For: **Superoxide Dismutase as a
Vaccine Antigen**

Confirmation No. 1196

Art Unit: 1645

Examiner: Ford, V.

Atty. Docket: 1581.0780000/RWE

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Reply To Restriction Requirement

Commissioner for Patents
Washington, D.C. 20231

Sir:

In reply to the Office Action dated **June 26, 2002**, (PTO Prosecution File Wrapper Paper No. 15), requesting an election of one invention to prosecute in the above-referenced patent application, Applicants hereby provisionally elect to prosecute the invention of Group I, represented by claims 1-5, 6-8, 10-13 and 15-17. This election is made without prejudice to or disclaimer of the other claims or inventions disclosed.

This election is made **with** traverse.

The basis for the restriction requirement is the Examiner's assertion that the claims of Group I (claims 1-5, 6-8, 10-13 and 15-17) lack novelty under PCT Article 33(2) as being anticipated by Tabatabai, L.B. and Pugh, G.W., *Vaccine* 12:919-924 (1994) ("Tabatabai"). See Paper No. 15, page 4. Applicants respectfully disagree with this assertion. Specifically, Applicants submit that Tabatabai does not teach a Cu,Zn-SOD of the type that is recited in the claims of group I.

The Cu,Zn-superoxide dismutase (Cu,Zn-SOD) that is recited in Applicants' claims is specified as a "bacterial Cu,Zn-SOD of the dimeric type." Tabatabai, by contrast,

describes vaccination of mice with Cu,Zn-SOD from *Brucella abortus* which is of the *monomeric* type. An explicit indication that the Cu,Zn-SOD described in Tabatabai is monomeric can be found, *inter alia*, in the subsequent publication of Chen, Y-L *et al.*, *Biochemistry* 34:12265-12275 (1995) ("Chen") (copy enclosed herewith as Exhibit A). In Chen, it is stated: "we have recently shown in our laboratory that Cu-Zn SOD from *B. abortus* is *monomeric* in solution (Cao, Tabatabai, and Kintanar, unpublished results)." See Chen at page 12274, column 1, last paragraph (emphasis added). In addition, the Tabatabai paper is discussed in the present application where it is noted that the *B. abortus* Cu,Zn-SOD described in Tabatabai is monomeric:

Tabatabai (Tabatabai and Pugh, 1994) showed that a synthetic fragment of a *monomeric* Cu,Zn-SOD (denoted as peptide 3) from *B. abortus* was able to provide a low level of immunity in mice against *Brucella* infection, but the level of protection provided was lower than that seen when using *Brucella* cell surface proteins and lipopolysaccharide antigens.

See specification at page 2, line 29, through page 3, line 1 (emphasis added). Thus, it is evident that the Cu,Zn-SOD described in Tabatabai is of the monomeric type.

Since the claims of group I recite a bacterial Cu,Zn-SOD of the dimeric type, and since Tabatabai teaches only a Cu,Zn-SOD of the monomeric type, it must be concluded that the claims of group I are novel over Tabatabai.

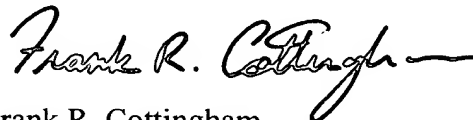
Accordingly, reconsideration and withdrawal of the Restriction Requirement, and consideration and allowance of all pending claims, are respectfully requested.

It is not believed that extensions of time are required, beyond those that may otherwise be provided for in accompanying documents. However, if additional extensions of time are necessary to prevent abandonment of this application, then such extensions of

time are hereby petitioned under 37 C.F.R. § 1.136(a), and any fees required therefor are hereby authorized to be charged to our Deposit Account No. 19-0036.

Respectfully submitted,

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